

# United States Senate

WASHINGTON, DC 20510

September 14, 2020

The Honorable Steven Mnuchin  
Secretary  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue NW  
Washington, D.C. 20220

The Honorable Jerome Powell  
Chairman  
Federal Reserve Board  
20th Street and Constitution Avenue NW  
Washington, D.C. 20551

Dear Secretary Mnuchin and Chair Powell:

We write to bring your attention to the economic impact faced by Tribes and Tribally-owned enterprises from the COVID-19 pandemic, and to recommend that the Department of Treasury and the Federal Reserve Board continue to engage Tribes in finding ways to maximize their relief under the Coronavirus Aid, Relief, and Economic Security (CARES) Act (Public Law 116-136).

Tribes and Tribally-owned businesses from across Indian Country have been severely impacted by the economic strains brought on by the COVID-19 pandemic. These businesses, from hotels, conference centers, restaurants, and entertainment venues to gas stations and shopping malls, are some of the biggest employers and income generators for Tribal and nearby non-Tribal communities. Unlike other governments, Tribes do not have a traditional tax base to generate government revenue; instead, Tribes rely on their businesses to generate revenue for government operations and essential services, such as health care, public safety, and social services, for their communities.<sup>1</sup>

Nearly 500 Tribally-owned businesses have temporarily closed due to the outbreak of COVID-19, which has left more than 700,000 people out of work.<sup>2</sup> Despite these closures, many Tribal enterprises must continue to fulfill their financial obligations to their partner banks while at the same time combating the virus in their community.

Title IV of CARES Act and Section 13(3) of the Federal Reserve Act provide authority for the Department of the Treasury and the Federal Reserve Board to address the many economic issues faced by Tribes and their enterprises during these challenging times. Two programs created under that authority, the Main Street Lending Program (MSLP) for corporations and the Municipal Liquidity Facility (MLF) for governments, provide relief for these entities by

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<sup>1</sup> Fed. Reserve Bank of Minneapolis, *COVID-19 and Indian Country: Early snapshot reveals disproportionate economic exposure and uncertainty* (Apr. 10, 2020), available at <https://www.minneapolisfed.org/article/2020/covid-19-and-indian-country-early-snapshot-reveals-disproportionate-economic-exposure-and-uncertainty>.

<sup>2</sup> Simon Romero & Jack Healy, *Tribal Nations Face Most Severe Crisis in Decades as the Coronavirus Closes Casinos*, *N.Y. TIMES* (May 11, 2020), available at <https://www.nytimes.com/2020/05/11/us/coronavirus-native-americans-indian-country.html>.

providing or facilitating loans. Further, by expressly including Indian Tribes in the definition of "States,"<sup>3</sup> Congress gave Treasury broad authority to account for the unique financing needs of Tribal governments and their enterprises.

We appreciate that the Department of Treasury considered the unique lending challenges Tribes face as it developed these programs. For example, the Department included Tribes and their businesses in the MSLP so that they have the option of seeking long term financial relief to address the economic impacts of COVID-19. However, because MSLP borrowers are prohibited from making distributions (dividends) to shareholders, Tribes were unable to participate, as revenues generated by Tribally-owned businesses must be distributed to Tribal governments for essential government services pursuant to Tribal and federal law. The Federal Reserve Board reviewed this prohibition and subsequently updated its guidance to exempt Tribes, permitting revenue from Tribally-owned businesses to be distributed to support essential government and community services. As with the distribution prohibition, we encourage you to continue to find ways to meet the direction of Congress and provide greater Tribal access to both the MSLP and the MLF.

In addition, Tribal governments and Tribally-owned businesses must often seek loans from private banks, and that debt is not treated in the same manner as State and Municipal government debt.<sup>4</sup> Tribes are also unable to access tax-exempt debt due to various statutory restrictions and ambiguities.<sup>5</sup> And because Tribal lands are held in trust by the federal government, they cannot be used for collateral or lending purposes. In short, due to the unique nature of Tribal governments and Tribal enterprise debts, Tribes and their businesses are unable to fully utilize the MSLP and the MLF. Accordingly, we encourage you to provide Tribes and Tribally-owned businesses greater access to the MSLP and MLF.

Thank you for your attention to this important matter. We look forward to continuing to work with you on the economic response to the COVID-19 pandemic's impacts on Indian Country.

Sincerely,



Tom Udall  
U.S. Senator



/s/ John Hoeven  
John Hoeven  
U.S. Senator



/s/ Sherrod Brown  
Sherrod Brown  
U.S. Senator



/s/ Mike Crapo  
Mike Crapo  
U.S. Senator

<sup>3</sup> CARES Act, Section 4002(10)(E).

<sup>4</sup> Accessing Capital in Indian Country: Hearing Before the Committee on Indian Affairs U.S. Senate, 114 Cong. 97 (2015) (Prepared Statement of Dante Desiderio).

<sup>5</sup> *Id.*